

CHAMBER OF COMMERCE
OF THE
UNITED STATES OF AMERICA

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VIA ELECTRONIC FILING

Ms. Marlene Dortch
Secretary
Federal Communications Commission
445 12th Street, NW
Washington, DC 20554

**Re: In the Matter of Streamlining Deployment of Small Cell Infrastructure by
Improving Wireless Facilities Siting Policies (WT Docket No. 16-421).**

Dear Ms. Dortch:

The U.S. Chamber of Commerce (“Chamber”), the world’s largest business federation representing the interests of more than three million businesses of all sizes, sectors, and regions, as well as state and local chambers and industry associations, and dedicated to promoting, protecting, and defending America’s free enterprise system, respectfully submits these comments to the Federal Communications Commission (“FCC” or “Commission”) in response to its Public Notice of December 22, 2016 requesting comment on Mobilitie, LLC’s (“Mobilitie”) Petition for Declaratory Ruling.¹

The Chamber encourages the Commission to consider and implement policies that ensure that America’s spectrum resources are maximized for all sectors of the economy and to minimize the level of radio interference across industries. As part of its efforts to maximize spectrum use economy-wide, the Chamber also stands at the forefront of promoting a vibrant digital economy, which will be powered by the Internet of Things (“IOT”) and 5G wireless technology. With these principles in mind, the Chamber advocates for policies that streamline permitting and reduce unnecessary delays in all facets of the communications industry.

I. The Benefits of Small Cell and 5G Technology

Small cell and 5G technology have the potential to be an economic game changer for the American economy. According to one study, there are more connected devices in the world than there are people and there are expected to be as many as 50 billion such devices worldwide by

¹ See Petition for Declaratory Ruling, *In the Matter of Promoting Broadband for All Americans by Prohibiting Excessive Charges for Access to Public Rights of Way* (Nov. 15, 2016) available at <https://ecfsapi.fcc.gov/file/122306218885/mobilitie.pdf>. (Hereinafter “Petition”).

2020.² It has been argued that 5G wireless technology will be the backbone of the IOT revolution and the connected economy.³ 5G technology will improve data speeds, which will be vital to increasing the usage of telemedicine and autonomous vehicles.⁴ The new connected economy and Smart Cities will require the deployment of small transmission cells, some of which are the size of a pizza box.⁵ A recent report published by Deloitte demonstrates how industries such as energy, health, public safety and transportation will leverage the enhanced wireless technology, leading to substantial economic investment and job development throughout the country.⁶

Small cell technology should not be confused with macrocells, which are the traditional large cell towers. Small cell technology can be installed on public lamp posts and in sports stadiums in order to accommodate increased wireless capacity.⁷ However, because they do not cover as large an area as the large cell towers, more small cells must be installed to obtain the benefits of widespread coverage. According to a study by Accenture,⁸

[t]he full potential of Smart Cities will be unlocked by 5G networks and small cells, creating jobs as well as entire new industries. Communities that support 5G wireless technology will see significant economic and community benefits. This next generation of wireless technology is expected to create 3 million new jobs and boost annual GDP by \$500 billion, driven by a projected \$275 billion investment from telecom operators.

Many localities across the country are benefiting from the use of Smart City technology powered by small cells such as Chicago, which uses 4G technology to provide real time video accessible to first responders, and in San Francisco wireless sensors are enabling authorities to be alerted to real-time and location-based information concerning gunshots.⁹

² Dale Evans, "The Internet of Things: How the Next Evolution of the Internet is Changing Everything," Cisco at 3 (Apr. 2011) available at http://www.cisco.com/c/dam/en_us/about/ac79/docs/innov/IoT_IBSG_0411FINAL.pdf.

³ Alexander Hellemans, "Why IoT Needs 5G," IEEE Spectrum (May 20, 2015) available at <http://spectrum.ieee.org/tech-talk/computing/networks/5g-taking-stock>.

⁴ Stacey Higginbotham, "Qualcomm readies itself for 5G with these 3 tech breakthroughs," Fortune (Oct. 14, 2015) available at <http://fortune.com/2015/10/14/qualcomm-5g/>.

⁵ Diana Goovaerts, "FCC Streamlines Rules for 5G, Small Cell, DAS Roll Outs," Wireless Week (Aug. 9, 2016) available at <https://www.wirelessweek.com/news/2016/08/fcc-streamlines-rules-5g-small-cell-das-roll-outs>.

⁶ Deloitte, "Wireless Connectivity Fuels Industry Growth and Innovation in Energy, Health, Public Safety, and Transportation," http://www.ctia.org/docs/default-source/default-document-library/deloitte_20170119.pdf, last accessed 3/3/2017.

⁷ "Small Cells & UltraSON," Qualcomm Research (2014) available at <https://www.qualcomm.com/media/documents/files/small-cells-and-ultrason-presentation.pdf>.

⁸ "Smart Cities: How 5G Can Help Municipalities Become Vibrant Smart Cities," Accenture Strategy at 3 (2017) available at <http://www.ctia.org/docs/default-source/default-document-library/how-5g-can-help-municipalities-become-vibrant-smart-cities-accenture.pdf>.

⁹ *Id.* at 10.

Small cell deployment, it has been argued, can also help reduce the digital divide.¹⁰ Many Americans, especially students living in rural and tribal areas in states like Alaska suffer major disadvantages with slow internet speeds at school.¹¹ Chairman Ajit Pai, promoting his Digital Empowerment Agenda designed to lessen the effects of the digital divide, recommended that:¹²

First, the FCC must aggressively use its legal authority to make sure that local governments don't stand in the way of broadband deployment. That means taking a fresh look at section 253 of the Communications Act and preempting state and local regulations that prohibit or have the effect of prohibiting the provision of service. It means looking at section 332(c)(7) of the Communications Act and section 6409 of the Spectrum Act, where Congress clearly and specifically granted the Commission and the power to remove barriers to infrastructure deployment.

The Chamber agrees with Chairman Pai that now is the time to use its congressionally-mandated authority to remove local government impediments that hinder the ability of the private sector to provide fast and affordable broadband. The Commission should implement policies that streamline and reduce the time required to obtain consent from local governments to site communications equipment on public rights of way ("PROW") in a manner consistent with reducing interference across industry sectors.

II. The FCC Should Require Localities to Implement Cost-Based Fee Structures for Siting Small Cells on Public Rights of Way

Localities generally require communications providers to pay fees for the installation of equipment on PROW. Unfortunately, as described in Mobilite's Petition, many localities are charging as much as \$10,000 in upfront application and administrative fees before allowing a wireless provider to even access a PROW. The localities used as example in the Petition did not explain how they arrived at the costs imposed upon wireless providers in their application fees.¹³ In addition to administrative and applications fees, localities are also imposing upon wireless providers annual costs based upon the number of units installed or a percentage of revenue.¹⁴

Unreasonable local PROW siting fees are contributing to slowing down the deployment of economy-stimulating technologies. Permitting delays and fee structures designed to enhance local government revenues "coupled with concerns about return on investment will cause delays

¹⁰ Eden Estopace, "Small cells can help bridge the digital divide," *Telecomasia* (July 12, 2016) *available at* <http://www.telecomasia.net/content/small-cells-can-help-bridge-digital-divide>.

¹¹ Naomi Nix, "Alaska's Disconnected Schools," *The Atlantic* (Dec. 16, 2015) *available at* <https://www.theatlantic.com/education/archive/2015/12/alaska-schools-internet/420648/>.

¹² Remarks of FCC Commissioner Ajit Pai (Sept. 21, 2016) *available at* https://apps.fcc.gov/edocs_public/attachmatch/DOC-341365A1.pdf.

¹³ *See* Petition at 16.

¹⁴ *Id.* at 18-19.

for the deployment of wireless infrastructure, potentially leading to the loss of projected benefits, including economic development and increased competitiveness....”¹⁵

Congress authorized the Commission to prevent localities from prohibiting entities from providing telecommunications services.¹⁶ States and localities have the authority to regulate PROWs in relation to telecommunications siting as well as to “require fair and reasonable compensation from telecommunications providers.”¹⁷ Currently, courts are split as to whether fees imposed by localities to use PROWs must be directly related to a telecommunications provider’s use of the ROW and the costs that use imposes on the local government.¹⁸ Given the federal circuit court split on the issue of PROW siting fees, the Chamber finds it entirely appropriate for the Commission to declare which practices related to siting fees charged by localities to communications providers are not fair and reasonable.

The Commission should adopt a definition for “fair and reasonable compensation” that enable localities to recoup costs that are reasonably related to reviewing and issuing permits as well as managing a PROW. Moreover, the Commission should prohibit localities from imposing charges, most notably fees based on telecommunications carrier revenue, not reasonably related to the actual use of a PROW.

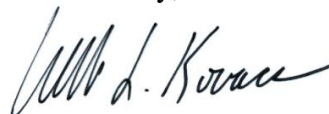
III. Conclusion

The FCC should implement policies that streamline the permitting processes of localities as well as require local governments to charge only fair and reasonable fees. This is not an issue that can be pushed off to the future. New technologies that depend on robust and ubiquitous communications networks are already being developed and implemented, and it is absolutely essential that the infrastructure be in place to support the explosion of demand for these vital communications services.

Not only does the Commission have the legal authority to prohibit local governments from charging unreasonable fees to telecommunications providers, it makes good policy sense for localities to benefit from the use of technologies that will lead to smarter cities which are more efficient, and save costs on services such as public safety.

Thank you for the opportunity to participate in this proceeding. If you have any follow up questions, I may be reached at (202) 463-5457 or by e-mail at wkovacs@uschamber.com.

Sincerely,



William L. Kovacs

¹⁵ See supra note 7, at 13.

¹⁶ See 47 U.S.C. § 253(a),(d).

¹⁷ 47 U.S.C. § 253(c).

¹⁸ See, e.g., *Puerto Rico Tel. Co., Inc. v. Municipality of Guayanilla*, 450 F.3d 9 (1st Cir. 2006); *TCG Detroit v. City of Dearborn*, 206 F.3d 618 (6th Cir. 2000).